

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

Crl.Rev.Pet.No. 681 of 1998

**CC.107/1993 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR
CRA.142/1996 of SESSIONS COURT, THRISSUR**
.....

REVN. PETITIONER:

**M. GEORGE JOHN, S/O. MEKKATTUKULAM JOB
GEO ASSOCIATES,
11/472, AUTOKARAN BILDINGS,
POST OFFICE ROAD, THRISSUR.**

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:

**1. JOSE, S/O. ALUKKA VARGHESE,
THRISSUR DISTRICT.**

**2. THE STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI.**

**BY ADV. SRI.P.V.CHANDRA MOHAN
R2 BY PUBLIC PROSECUTOR MR. AMJAD ALI**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 02/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

ORDER ON C.M.P. NO. 3527 OF 1998 IN CRL..R.P. NO. 681 OF 1998

DISMISSED.

2-3-2007

SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S. TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.681 of 1998

DATED THIS THE 2nd DAY OF March 2007

ORDER

The revision petitioners are the accused in the proceedings initiated under Section 138 of the Negotiable Instruments Act with respect to the dishonour of cheque for Rs.1,49,250/- for want of funds in the account of the accused. He stands convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,55,000/- and in default of payment of fine to undergo simple imprisonment for two months. The contention of the revision petitioner is that the complainant has not satisfied the proviso (b) to Section 138 of the N.I.Act as according to him, he has only received an empty cover without any contents. It is further contended that the prosecution has not been initiated within the time stipulated in Section 142(b) of the N.I.Act. It is pointed out that the alleged receipt of notice is 23-5-1992 and the complaint has been filed only on 5-8-1992.

2. The courts below on appreciation of evidence has found that the contention of the revision petitioner that he received the empty cover stands not established. The evidence adduced in this behalf by the complainant that consisted of the testimony of PW3, the

complainant, PW5, employee of the complainant who despatched the notice and PW4, Senior Superintendent, Postal Division and Exts.P4 to P12(a), i.e. copy of the notice dated 20-5-1992, postal receipt and the records of the postal authorities respectively do establish the fact that the notice has been served on the revision petitioner/accused on 23-5-1992. On appreciation of evidence, I find there is no scope for interference in exercise of the revisional jurisdiction of this Court. It stands established that the notice has been issued within the time limit prescribed and that the same has been received by the accused/revision petitioner.

3. The second contention is that the complainant has initiated the proceedings in court beyond the time limit prescribed by Section 142(b), i.e. as the provisions stood then beyond 45 days of the receipt of notice i.e., beyond 30 days of the commencement of the cause of action. The courts below relying on the decision reported in **Santa Priya v. Udyan Sankar Das, 1994(2)KLT 404** held that the expression within 15 days of the receipt of the said notice should be understood to mean 15 days from the date of knowledge of the sender regarding the receipt of the notice. I find that the above is only possible course in the circumstances to secure ends of justice. The evidence is to the effect that the accused has deliberately suppressed

the fact of receipt of notice. In the circumstances, I find no reason to deviate the findings of the courts below. The revision petition is dismissed. The conviction and sentence is confirmed.

Considering the plea of the counsel for the revision petitioner, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.1,55,000/-. The revision petitioner shall appear before the court of Chief Judicial magistrate, Thrissur on 30-3-2007 to receive sentence.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P.NO.681 of 1998

ORDER

2nd March 2007